



2. For example, Defendants assert that "Plaintiffs' [sic] obstinate refusal to disclose such basic information [as the work product materials the State voluntarily agreed to produce on February 1, 2007, at the December 15, 2006 hearing] has severely retarded the development of the issues in this lawsuit," and that a November 2008 deadline is not achievable because the State has not "forthrightly disclosed the basis for this lawsuit in their [sic] initial disclosures or even in response to discovery." *See* Defendants' Scheduling Proposal, p. 2. Such assertions are without any foundation. The truth of the matter is that assertions by Defendants that they do not know the basis for this lawsuit lack credibility. Defendants were acknowledging in advertising prior to the filing of this lawsuit that poultry waste is a source of nutrients in the Illinois River Watershed. *See* Exhibit 1 (Sept. 10, 2004 *Tulsa World* ad stating: "Our Scenic River Watersheds are examples of environments that include many sources of nutrients that potentially impact the health of the rivers and streams that lie within them. We are prepared to do our part to take care of the poultry portions of the nutrient equation. . ."); Exhibit 2 (Dec. 5, 2004 *Tulsa World* ad stating: "Lately, a good deal of concern has been raised about the effects of excess nutrients in the land and waters of Eastern Oklahoma. So where do these nutrients come from? Nutrients can come from many sources, one of which is the use of poultry litter as an organic fertilizer. . ."). Defendants were likewise put on notice of the basis of the lawsuit through the State's fact-rich 147-paragraph First Amended Complaint [DKT #18]. Defendants were further put on notice of the basis of the lawsuit through the State's 72-page Rule 26(a) disclosure. Defendants have also received responses by the State to some 234 requests for production and 74 interrogatories.

---

in good faith and, unable to reach an accord, agreed to disagree. In fact, at the conclusion of those meetings the respective sides agreed that the discussions had occurred in good faith. For Defendants now to do a 180 degree turn-around in their characterization of the meetings and suggest that the State acted in an uncooperative and obstructionist manner is a misrepresentation of the facts.

Further, to date, the State has produced more than 300 boxes of documents to Defendants, as well as a very large amount of sampling data. Rather than dealing with the lawsuit that has been plainly and in detail laid out before them, Defendants have instead resorted to repeating a tired refrain of pretending that they do not understand the basis of the State's lawsuit. Ignoring the available information cannot, however, be used as a basis for claiming one does not know what the lawsuit is all about. In short, Defendants' argument that the State's proposed scheduling order is unrealistic because Defendants allegedly do not know what the lawsuit is about lacks credibility.

3. Defendants also assert that the State has "substantially delayed Defendants in their efforts to obtain relevant records from State agencies." *See* Defendants' Scheduling Proposal, p. 2, fn 1. This is incorrect. *See* Plaintiff State of Oklahoma's Response in Opposition to "Tyson Defendants' Motion to Compel," [DKT #1036]. The truth of the matter is that the State has diligently worked to ensure that agency productions are as complete as possible and are made in a timely manner. Further, in connection with the agency productions, the State has provided Defendants with lists matching responsive documents with discovery requests, thereby facilitating the identification of relevant records. *See id.* To date, productions have occurred at multiple agencies, and more are in the process of being scheduled. Finally, Defendants' contention that the State has put unreasonable restrictions on the Defendants' copying is not supportable. The documents being produced by the State are in many instances working agency files. Given this fact, the State explained to Defendants that taking to a copy service all of the agency files at the same time (as opposed to on a rolling basis) would unduly interfere with the ability of the agencies to properly function. Prior to this pleading, Defendants had not raised any issue with this copying protocol. Once it was notified of this issue, the State offered to discuss

with Defendants a procedure to address their concerns. Simply put, the agency productions are proceeding at an appropriate pace and will not detract from meeting the deadlines on the State's proposed schedule.

4. Defendants also assert that the State's proposal to sequence the disclosure of its non-damage and damage experts is "improper." *See* Defendants' Scheduling Proposal, p. 3. Defendants, however, neglected in their papers to explain the State's reasoning for the sequential disclosure: namely that until the injury is fully characterized, the damages work cannot be completed. Further, by accelerating the disclosure of the non-damage experts -- which are by definition antecedent to discovery of the damages experts -- discovery into the non-damage experts' opinions (and any challenges to those opinions) can be dealt with earlier in the case. The alternative proposal by Defendants -- a single disclosure of all experts at a much later date -- will do nothing but unnecessarily delay the disclosure of the non-damage experts and create a log-jam of expert-related issues at the conclusion of the pre-trial phase of the case.

5. Defendants also assert that the 60-day time-frame between the State's disclosure of its non-damage experts and Defendants' non-damage experts is insufficient. *See* Defendants' Scheduling Proposal, p. 3. Defendants apparently ignore the fact that in the *City of Tulsa* case, the time-frame between plaintiff and defendant expert disclosures was only 30 days. *See City of Tulsa v. Tyson Foods, Inc.*, No. 01-C-900-B, N.D. Okla., Feb. 14, 2002 Scheduling Order (DKT # 53). Further, Defendants apparently ignore the fact that the State, beginning on February 1, 2007, began disclosing its sampling data. Access to this data, in conjunction with the State's previously-provided discovery, should enable Defendants' experts to work on preparing immediately.

6. Defendants also assert that contemporaneous disclosure of damage experts is unworkable. It is not. Once the injury is characterized, both sides will be in an equal position to perform their respective quantifications of the damages. Defendants' quantification of the State's damages is not dependent on the State's own quantification of its damages. To stagger the disclosure of damage experts will unnecessarily delay the progress of the case.

7. Defendants also assert that with respect to its stated intention to file a motion for preliminary injunction, the State "flatly refused" to provide details "as to the basis of the motion, the nature and geographic scope of the relief to be sought and the anticipated filing date of such a motion." *See* Defendants' Scheduling Proposal, p. 4. This is incorrect. The State merely told Defendants that it was not in a position to do so at that point in time. Indeed, the State's disclosure of its intention to seek a preliminary injunction was done as a courtesy to Defendants. The State was under no obligation to even tell Defendants its plan (or, for that matter, the timing of its plan). For Defendants to attempt to spin this sign of good faith by the State into a purported example of non-cooperation illustrates the lengths to which Defendants will go to unjustifiably attempt to cast the State in a poor light.

The State's scheduling order sets forth a fair, even-handed and appropriate schedule for moving this case forward to trial. The State looks forward to explaining in detail its proposed scheduling order at the February 15, 2007 hearing.

WHEREFORE, premises considered, the State's proposed scheduling order should be entered without modification and Defendants' proposed scheduling order should be rejected in its entirety.

Respectfully submitted,

W.A. Drew Edmondson OBA # 2628  
Attorney General  
Kelly H. Burch OBA #17067  
J. Trevor Hammons OBA #20234  
Robert D. Singletary OBA #19220  
Assistant Attorneys General  
State of Oklahoma  
313 N.E. 21st St.  
Oklahoma City, OK 73105  
(405) 521-3921

/s/ M. David Riggs

M. David Riggs OBA #7583  
Joseph P. Lennart OBA #5371  
Richard T. Garren OBA #3253  
Douglas A. Wilson OBA #13128  
Sharon K. Weaver OBA #19010  
Robert A. Nance OBA #6581  
D. Sharon Gentry OBA #15641  
Riggs, Abney, Neal, Turpen,  
Orbison & Lewis  
502 West Sixth Street  
Tulsa, OK 74119  
(918) 587-3161

James Randall Miller, OBA #6214  
Louis Werner Bullock, OBA #1305  
Miller Keffer & Bullock  
222 S. Kenosha  
Tulsa, Ok 74120-2421  
(918) 743-4460

David P. Page, OBA #6852  
Bell Legal Group  
222 S. Kenosha  
Tulsa, OK 74120  
(918) 398-6800

Frederick C. Baker  
(admitted *pro hac vice*)  
Elizabeth C. Ward  
(admitted *pro hac vice*)  
Motley Rice, LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29465  
(843) 216-9280

William H. Narwold  
(admitted *pro hac vice*)  
Motley Rice, LLC  
20 Church Street, 17<sup>th</sup> Floor  
Hartford, CT 06103  
(860) 882-1676

Attorneys for the State of Oklahoma

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of February, 2007, the foregoing document was electronically transmitted to the following:

**Jo Nan Allen** - jonanallen@yahoo.com bacaviola@yahoo.com  
**Robert Earl Applegate** - hm@holdenokla.com rapplegate@holdenokla.com  
**Frederick C Baker** - fbaker@motleyrice.com; mcarr@motleyrice.com;  
fhmorgan@motleyrice.com  
**Tim Keith Baker** - tbakerlaw@sbcglobal.net  
**Sherry P Bartley** - sbartley@mwsgw.com jdavis@mwsgw.com  
**Michael R. Bond** - michael.bond@kutakrock.com amy.smith@kutakrock.com  
**Douglas L Boyd** - dboyd31244@aol.com  
**Vicki Bronson** - vbronson@cwlaw.com lphillips@cwlaw.com  
**Paula M Buchwald** - pbuchwald@ryanwhaley.com  
**Louis Werner Bullock** - LBULLOCK@MKBLAW.NET  
NHODGE@MKBLAW.NET;BDEJONG@MKBLAW.NET  
**A Michelle Campney** - campneym@wwhwlaw.com steelmana@wwhwlaw.com  
**Michael Lee Carr** - hm@holdenoklahoma.com MikeCarr@HoldenOklahoma.com  
**Bobby Jay Coffman** - bcoffman@loganlowry.com  
**Lloyd E Cole, Jr** - colelaw@alltel.net; gloriaeubanks@alltel.net; amy\_colelaw@alltel.net  
**Angela Diane Cotner** - AngelaCotnerEsq@yahoo.com  
**Reuben Davis** - rdavis@boonesmith.com  
**John Brian DesBarres** - mrjdbd@msn.com JohnD@wcalaw.com  
**W A Drew Edmondson** - fc\_docket@oag.state.ok.us; drew\_edmondson@oag.state.ok.us;  
suzy\_thrash@oag.state.ok.us.  
**Delmar R Ehrich** - dehrich@faegre.com; etriplett@faegre.com; qsperrazza@faegre.com  
**John R Elrod** - jelrod@cwlaw.com vmorgan@cwlaw.com  
**William Bernard Federman** - wfederman@aol.com; aw@federmanlaw.com;  
ngb@federmanlaw.com  
**Bruce Wayne Freeman** - bfreeman@cwlaw.com lclark@cwlaw.com  
**Ronnie Jack Freeman** - jfreeman@grahamfreeman.com  
**Richard T Garren** - rgarren@riggsabney.com dellis@riggsabney.com  
**Dorothy Sharon Gentry** - sgentry@riggsabney.com jzielinski@riggsabney.com  
**Robert W George** - robert.george@kutakrock.com; sue.arens@kutakrock.com;  
amy.smith@kutakrock.com

**Tony Michael Graham** - tgraham@grahamfreeman.com  
**James Martin Graves** - jgraves@bassetlawfirm.com  
**Michael D Graves** - mgraves@hallestill.com; jspring@hallestill.com; smurphy@hallestill.com  
**Jennifer Stockton Griffin** - jgriffin@lathropgage.com  
**Carrie Griffith** - griffithlawoffice@yahoo.com  
**John Trevor Hammons** thammons@oag.state.ok.us; Trevor\_Hammons@oag.state.ok.us;  
 Jean\_Burnett@oag.state.ok.us  
**Lee M Heath** - lheath@motleyrice.com  
**Michael Todd Hembree** - hembreeawl@aol.com traesmom\_mdl@yahoo.com  
**Theresa Noble Hill** - thillcourts@rhodesokla.com mnave@rhodesokla.com  
**Philip D Hixon** - phixon@mcdaniel-lawfirm.com  
**Mark D Hopson** - mhopson@sidley.com joraker@sidley.com  
**Kelly S Hunter Burch** - fc.docket@oag.state.ok.us; kelly\_burch@oag.state.ok.us;  
 jean\_burnett@oag.state.ok.us  
**Thomas Janer** - SCMJ@sbcglobal.net; tjaner@cableone.net; lanaphillips@sbcglobal.net  
**Stephen L Jantzen** - sjantzen@ryanwhaley.com; mantene@ryanwhaley.com;  
 loelke@ryanwhaley.com  
**Mackenzie Lea Hamilton Jessie** - maci.tbakerlaw@sbcglobal.net; tbakerlaw@sbcglobal.net;  
 macijessie@yahoo.com  
**Bruce Jones** - bjones@faegre.com; dybarra@faegre.com; jintermill@faegre.com;  
 cdolan@faegre.com  
**Jay Thomas Jorgensen** - jjorgensen@sidley.com  
**Krisann C. Kleibacker Lee** - kkleee@faegre.com mlokken@faegre.com  
**Derek Stewart Allan Lawrence** - hm@holdenoklahoma.com;  
 DerekLawrence@HoldenOklahoma.com  
**Raymond Thomas Lay** - rtl@kiralaw.com dianna@kiralaw.com  
**Nicole Marie Longwell** - nlongwell@mcdaniel-lawfirm.com lvictor@mcdaniel-lawfirm.com  
**Dara D Mann** - dmann@faegre.com kolmscheid@faegre.com  
**Teresa Brown Marks** - teresa.marks@arkansasag.gov; dennis.hansen@arkansasag.gov  
**Linda C Martin** - lmartin@dsda.com mschooling@dsda.com  
**Archer Scott McDaniel** - smcdaniel@mcdaniel-lawfirm.com jwaller@mcdaniel-lawfirm.com  
**Robert Park Medearis, Jr** - medearislawfirm@sbcglobal.net  
**James Randall Miller** - rmiller@mkblaw.net; smilata@mkblaw.net; clagrone@mkblaw.net  
**Charles Livingston Moulton** - Charles.Moulton@arkansasag.gov;  
 Kendra.Jones@arkansasag.gov  
**Robert Allen Nance** rnance@riggsabney.com jzielinski@riggsabney.com  
**William H Narwold** - bnarwold@motleyrice.com  
**John Stephen Neas** - steve\_neas@yahoo.com  
**George W Owens** - gwo@owenslawfirmpc.com ka@owenslawfirmpc.com  
**David Phillip Page** - dpage@edbelllaw.com smilata@edbelllaw.com  
**Michael Andrew Pollard** - mpollard@boonesmith.com kmiller@boonesmith.com  
**Marcus N Ratcliff** - mratcliff@lswsl.com sshanks@lswsl.com  
**Robert Paul Redemann** - rredemann@pmrlaw.net scouch@pmrlaw.net  
**Melvin David Riggs** - driggs@riggsabney.com jsummerlin@riggsabney.com  
**Randall Eugene Rose** - rer@owenslawfirmpc.com ka@owenslawfirmpc.com  
**Patrick Michael Ryan** - pryan@ryanwhaley.com; jmickle@ryanwhaley.com;



amcpherson@ryanwhaley.com  
**Laura E Samuelson** - lsamuelson@lswsl.com lsamuelson@gmail.com  
**Robert E Sanders** - rsanders@youngwilliams.com  
**David Charles Senger** - dsenger@pmrlaw.net; scouch@pmrlaw.net; ntorres@pmrlaw.net  
**Jennifer Faith Sherrill** - jfs@federmanlaw.com; law@federmanlaw.com;  
ngb@federmanlaw.com  
**Robert David Singletary** - fc\_docket@oag.state.ok.us; robert\_singletary@oag.state.ok.us;  
jean\_burnett@oag.state.ok.us  
**Michelle B Skeens** - hm@holdenokla.com mskeens@holdenokla.com  
**William Francis Smith** - bsmith@grahamfreeman.com  
**Monte W Strout** - strout@xtremeinet.net  
**Erin Walker Thompson** - Erin.Thompson@kutakrock.com  
**Colin Hampton Tucker** - chtucker@rhodesokla.com scottom@rhodesokla.com  
**John H Tucker** - jtucker@rhodesokla.com mbryce@rhodesokla.com  
**Kenneth Edward Wagner** - kwagner@lswsl.com sshanks@lswsl.com  
**Elizabeth C Ward** - lward@motleyrice.com  
**Sharon K Weaver** - sweaver@riggsabney.com lpearson@riggsabney.com  
**Timothy K Webster** - twebster@sidley.com jwedeking@sidley.com  
**Gary V Weeks**  
**Terry Wayen West** - terry@thewestlawfirm.com  
**Dale Kenyon Williams, Jr** - kwilliams@hallestill.com; jspring@hallestill.com;  
smurphy@hallestill.com  
**Edwin Stephen Williams** - steve.williams@youngwilliams.com  
**Douglas Allen Wilson** - Doug\_Wilson@riggsabney.com; jsummerlin@riggsabney.com  
**J Ron Wright** - ron@wsfw-ok.com susan@wsfw-ok.com  
**Elizabeth Claire Xidis** - cxidis@motleyrice.com  
**Lawrence W Zeringue** - lzingue@pmrlaw.net scouch@pmrlaw.net

and was further served upon the following by U.S. Postal Service:

**Jim Bagby**  
RR 2, Box 1711  
Westville, OK 74965

**Gordon W. Clinton**  
**Susann Clinton**  
23605 S Goodnight Ln  
Welling, OK 74471

**Eugene Dill**  
P O Box 46  
Cookson, OK 74424

**Marjorie Garman**  
5116 Highway 10  
Tahlequah, OK 74464

**James C Geiger**  
Address Unknown

**Thomas C Green**  
Sidley Austin Brown & Wood LLP  
1501 K St NW  
Washington, DC 20005

**G Craig Heffington**  
20144 W Sixshooter Rd  
Cookson, OK 74427

**Cherrie House**  
**William House**  
P O Box 1097  
Stilwell, OK 74960

**John E. & Virginia W. Adair Family  
Trust**  
Rt 2 Box 1160  
Stilwell, OK 74960

**Dorothy Gene Lamb  
James Lamb**  
Route 1, Box 253  
Gore, OK 74435

**Jerry M Maddux**  
Selby Connor Maddux Janer  
P O Box Z  
Bartlesville, OK 74005-5025

**Doris Mares**  
P O Box 46  
Cookson, Ok 74424

**Donna S Parker  
Richard E. Parker**  
34996 S 502 Rd  
Park Hill, OK 74451

**C Miles Tolbert**  
Secretary Of The Environment  
State Of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118

**Robin L. Wofford**  
Rt 2, Box 370  
Watts, OK 74964

/s/ M. David Riggs